



## *Report to the Auburn City Council*

Action Item

Agenda Item No.

2

City Manager's Approval

**To:** Honorable Mayor and City Council Members  
**From:** Andy Heath, Administrative Services Director  
**Date:** April 22, 2013  
**Subject:** Assignment of Auburn Airport Land Leases from Fine Particle Technology LLC to Auburn Industrial Park No. 1 and 2, L.P.

### *The Issue*

Shall the City Council consent to the assignment and assumption of two land leases from Fine Particle Technology LLC to Auburn Industrial Park No. 1 and 2, L.P., and authorize the execution of all related documents?

### *Conclusions and Recommendations*

By **RESOLUTION**, authorize the City Manager or his designee to approve the assignment and assumption of the land leases between the City of Auburn and Fine Particle Technology LLC to Auburn Industrial Park No. 1 and 2, L.P., and authorize the execution of all related documents.

### *Background*

On July 22, 1985 and October 1, 1985, the City Council approved 50-year land leases between the City of Auburn and R&W Products for Airport Industrial Park Lots 18, 20, 21, 22P; and Lot 19, respectively. These leases were subsequently assigned on September 23, 1991 and March 4, 1991 to Fine Particle Technology LLC (formerly known as Fine Particle Technology Corporation Inc. Together, the land leases comprise approximately 214,055 square feet of real property upon which reside warehouse / office buildings and a parking lot.

### *Analysis*

As a means to facilitate the assignment of the lease, Fine Particle Technology LLC has requested the City's consent to assign the leasehold interests for the above referenced premises to Auburn Industrial Park No. 1 and 2, L.P. In addition to the City's approval of the lease assignment, staff recommends the City consent to the execution of any related documents including the recording, by the Placer County Recorder's Office, of memoranda of lease for the affected parcels, if necessary.

**Alternatives Available to Council; Implications of Alternatives**

1. Adopt a resolution authorizing the City Manager or his designee to approve the assignment and assumption of the land leases between the City of Auburn and Fine Particle Technology LLC to Auburn Industrial Park No. 1 and 2, L.P., and authorize the execution of all related documents.
2. Do not adopt a resolution and direct staff accordingly.

**Fiscal Impact**

None. The monthly lease amount of \$3,100.01 currently paid by Fine Particle Technology LLC and its subtenants will be assumed by the assignees to the lease.

Attachments – Assignments of Lease with Consent

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RESOLUTION NO. 13-

RESOLUTION APPROVING ASSIGNMENT OF AIRPORT LAND LEASE FROM FINE  
PARTICLE TECHNOLOGY LLC TO AUBURN INDUSTRIAL PARK NO 1 AND 2, L.P.

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THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

That the City Council of the City of Auburn does hereby authorize the  
City Manager or his designee to approve the assignment and assumption of the  
Land Lease between the City of Auburn and Fine Particle Technology LLC to  
Auburn Industrial Park No. 1 and 2, L.P., and authorize the execution of all  
related documents.

DATED: April 22, 2013

\_\_\_\_\_  
Kevin Hanley, Mayor

ATTEST:

\_\_\_\_\_  
Stephanie L. Snyder, City Clerk

I, Stephanie L. Snyder, City Clerk of the City of Auburn, hereby  
certify that the foregoing resolution was duly passed at a regular meeting of  
the City Council of the City of Auburn held on the 22<sup>nd</sup> day of April 2013 by  
the following vote on roll call:

Ayes:  
Noes:  
Absent:

\_\_\_\_\_  
Stephanie L. Snyder, City Clerk

ASSIGNMENT OF LEASE WITH CONSENT  
(AUBURN MUNICIPAL AIRPORT)  
LOTS # 18, 20, 21 and a portion of Lot 22

This Assignment of Lease with Consent ("**Assignment**") dated as of \_\_\_\_\_, 2013 (the "**Effective Date**") is made and entered into for good and valuable consideration by and between Fine Particle, LLC, a California limited liability company, fka Fine Particle Technology Corporation, Inc. ("**Assignor**") and Auburn Industrial Park No. 1, L.P., a California limited partnership ("**Assignee**"), with reference to the following facts:

RECITALS

A. City of Auburn, a Municipal Corporation, as Lessor, and Sten G. Walls and Lawrence T. Lindgren, dba R&W Products, as Lessee, executed those certain Auburn Airport Industrial Park Industrial Site Leases ("**Leases**") on July 22, 1985, pursuant to City Resolutions #85-137 and 85-138, for the lease of premises commonly known as 13079 Earhart Avenue, Lots 18, 20, 21 and a portion of Lot 22, Auburn, California, which Leases were assigned on September 1, 1986 to RAMCO Investments, and subsequently assigned by RAMCO Investments on September 23, 1991, to Assignor. By the terms of the Leases the Leased Premises were leased to Assignor as Lessee for a term of fifty (50) years, commencing on July 22, 1985, and ending on July 22, 2035.

B. Assignor now desires to assign the Leases to Assignee, and Assignee desires to accept the assignment thereof.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Assignor, Assignee and City agree as follows:

1. Effectiveness. This Assignment shall be effective as of the Effective Date.
2. Assignment, Assumption and Consent. Assignor hereby assigns and delegates to Assignee, and Assignee hereby accepts and assumes from Assignor, all of Assignor's rights and obligations as the "Lessee" under the Leases with respect to the Leased Premises and the improvements constructed thereon. Without limiting the foregoing, Assignee hereby agrees, for the benefit of Assignor and the City, to perform all of the obligations of the "Lessee" under Leases that relate to the Leased Premises and the improvements constructed thereon. The City hereby consents to the assignment and delegation by Assignor, and the acceptance and assumption by Assignee, of such rights and obligations.
3. Release of Assignor. The City hereby releases and discharges Assignor from any obligations of "Lessee" occurring on and after the Effective Date.
4. Entire Agreement. This Assignment, together with the Leases, is the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between the parties with respect to the matters contained in this Assignment. Any waiver, modification, consent or acquiescence with

respect to any provision of this Agreement shall be set forth in writing and duly executed by or in behalf of the party to be bound thereby. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

5. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of California without giving effect to its conflicts of law principles.

6. Third Party Beneficiaries. No third party shall have any rights under this Assignment.

7. Subject to Lease. This Assignment is subject to all the terms, conditions and provisions of the Leases.

**ASSIGNOR:**

FINE PARTICLE, LLC, a California limited liability company, fka Fine Particle Technology Corporation, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**ASSIGNEE:**

AUBURN INDUSTRIAL PARK NO. 1, L.P., a California limited partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**CITY:**

THE CITY OF AUBURN,  
a municipal corporation

By: \_\_\_\_\_  
Robert Richardson  
City Manager

Attest:

\_\_\_\_\_  
Stephanie L. Snyder  
City Clerk

Approved as to form:

\_\_\_\_\_  
Michael G. Colantuono  
City Attorney

ASSIGNMENT OF LEASE WITH CONSENT  
(AUBURN MUNICIPAL AIRPORT)  
LOT # 19

This Assignment of Lease with Consent ("**Assignment**") dated as of \_\_\_\_\_, 2013 (the "**Effective Date**") is made and entered into for good and valuable consideration by and between Fine Particle, LLC, a California limited liability company, fka Fine Particle Technology Corporation, Inc. ("**Assignor**") and Auburn Industrial Park No. 2, L.P., a California limited partnership ("**Assignee**"), with reference to the following facts:

RECITALS

A. City of Auburn, a Municipal Corporation, as Lessor, and Sten G. Walls and Lawrence T. Lindgren, dba R&W Products, as Lessee, executed that certain Auburn Airport Industrial Park Industrial Site Lease ("**Lease**") on October 1, 1985, pursuant to City Resolution #85-187, for the lease of premises commonly known as 13079 Earhart Avenue, Lot 19, Auburn, California, which Lease was assigned on March 4, 1991, by mesne assignments, to Assignor. By the terms of the Lease the Leased Premises were leased to Assignor as Lessee for a term of fifty (50) years, commencing on October 1, 1985, and ending on October 1, 2035.

B. Assignor now desires to assign the Lease to Assignee, and Assignee desires to accept the assignment thereof.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Assignor, Assignee and City agree as follows:

1. Effectiveness. This Assignment shall be effective as of the Effective Date.
2. Assignment, Assumption and Consent. Assignor hereby assigns and delegates to Assignee, and Assignee hereby accepts and assumes from Assignor, all of Assignor's rights and obligations as the "Lessee" under the Lease with respect to the Leased Premises and the improvements constructed thereon. Without limiting the foregoing, Assignee hereby agrees, for the benefit of Assignor and the City, to perform all of the obligations of the "Lessee" under Lease that relate to the Leased Premises and the improvements constructed thereon. The City hereby consents to the assignment and delegation by Assignor, and the acceptance and assumption by Assignee, of such rights and obligations.
3. Release of Assignor. The City hereby releases and discharges Assignor from any obligations of "Lessee" occurring on and after the Effective Date.
4. Entire Agreement. This Assignment, together with the Lease is the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between the parties with respect to the matters contained in this Assignment. Any waiver, modification, consent or acquiescence with respect to any provision of this Agreement shall be set forth in writing and duly executed by or in

behalf of the party to be bound thereby. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

5. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of California without giving effect to its conflicts of law principles.

6. Third Party Beneficiaries. No third party shall have any rights under this Assignment.

7. Subject to Lease. This Assignment is subject to all the terms, conditions and provisions of the Lease.

**ASSIGNOR:**

FINE PARTICLE, LLC, a California limited liability company, fka Fine Particle Technology Corporation, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**ASSIGNEE:**

AUBURN INDUSTRIAL PARK NO. 2, L.P., a California limited partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**CITY:**

THE CITY OF AUBURN,  
a municipal corporation

By: \_\_\_\_\_  
Robert Richardson  
City Manager

Attest:

\_\_\_\_\_  
Stephanie L. Snyder  
City Clerk

Approved as to form:

\_\_\_\_\_  
Michael G. Colantuono  
City Attorney

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